

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 95-0335
WITHHOLDING TAX / RESPONSIBLE OFFICER LIABILITY
For Years 1985, 1986, and 1987**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date its is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning the specific issue.

ISSUES

- I. Responsible Officer Liability – Duty to Remit Withholding Taxes:** Burden of Proof for Establishing Validity of Withholding Tax Assessment.

Authority: IC 6-3-4-8; IC 6-3-4-8(f); IC 6-8.1-5-1.

The taxpayer protests the assessment of withholding taxes. Taxpayer maintains that the department has not produced records which establish that he owes these taxes. Further, the taxpayer argues that he is not responsible for preserving the relevant business records over an extended period of time.

- II. Abatement of Interest Charges Accrued Since the Original Withholding Tax Assessment.**

Even assuming that the Department could meet its purported burden of proof and demonstrate that the taxpayer was originally responsible for remitting withholding taxes, taxpayer argues that because of the delay in responding to the taxpayer's protest, wholly attributable to the Department according to Taxpayer, the interest which has accrued on the original assessment should be entirely abated.

STATEMENT OF FACTS

The taxpayer was assessed for unpaid withholding taxes in a series of AR-80 Proposed Assessments issued during 1995. The assessments resulted from a time during which taxpayer operated a tool and engineering company. The taxpayer has declined to discuss the company, his role in that tool company, or the circumstances under which the WH-1 forms were received by the Department but were not accompanied by payment.

I. Responsible Officer Liability – Duty to Remit Withholding Taxes: Burden of Proof for Establishing Validity of Withholding Tax Assessment.

DISCUSSION

IC 6-3-4-8 imposes upon employers the responsibility for withholding state income taxes and remitting those taxes to the state. Under IC 6-3-4-8(f), the taxes which have been withheld belong to the State of Indiana. The employer is charged with the duty of “hold[ing] the [taxes] in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided.”

In the face of the series of assessments for unpaid withholding taxes, taxpayer maintains that he is certain that he paid the taxes at the time the taxes were originally due. Additionally, the taxpayer maintains that the Department has failed to prove either that the amount of the assessment is correct or that the taxpayer indeed did not pay them when originally due. However, the taxpayer has failed to provide any evidence the taxes were paid. Further, the taxpayer has failed to provide any explanation for his failure to provide that evidence at the time the purportedly erroneous assessments were levied.

Taxpayer misapprehends the burden of proof surrounding the notice of a proposed tax assessment. The amount of the original assessments was predicated on the information taxpayer provided on the withholding forms. In addition, IC 6-8.1-5-1 states that “[t]he notice of proposed assessment is prima facie evidence that the department’s claim for unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.”

FINDING

Taxpayer’s protest is respectfully denied.

II. Abatement of Interest Charges Accrued Since the Original Withholding Tax Assessment.

The taxpayer makes a general equitable argument favoring the abatement of all interest which has accrued since the time the taxes were originally due. Taxpayer argues that the lengthy delay in issuing the AR-80 proposed assessment forms and the delay in responding to the taxpayer’s protest, filed in 1995, is entirely attributable to the Department.

The issue of whether the Department or the taxpayer is responsible for the delay in responding to the taxpayer’s protest is irrelevant. The Department is without the statutory or equitable authority to abate the interest which has accrued on the unpaid taxes. Absent authority to abate that interest, the Department must decline the opportunity to do so.

FINDING

Taxpayer's protest is respectfully denied.